



Value Pregnant Women & Mothers: Vote “NO” on 2

**Alabama’s Amendment 2 is Not Just About Abortion.
It Would Impact All Pregnant Women and People Who Want to Be Pregnant.**

Amendment 2 Will Hurt All Pregnant Women

Supporters of Amendment 2 claim that it will only impact the issue of abortion. Amendment 2, however, would make it state policy—under *all* of Alabama’s laws—to “recognize and support the sanctity of unborn life and the rights of unborn children,” including their right to life. Although the Amendment does not define “unborn child,” this term and similar words have been interpreted under Alabama law to include fertilized eggs, embryos and fetuses, impacting women from the moment they become pregnant whether they know they are pregnant or not.

Because of Amendment 2’s broad language, if it passes it would not only remove any protection for the right to choose to have an abortion from the state’s constitution, it would also create a mandate to anyone with state authority—including police, prosecutors, and judges—to “ensure the protection of the rights of the unborn child (fertilized eggs embryos and fetuses) in all manners and measures. . .” Everyone who works for the state and everyone who has reporting obligations to the state (including doctors and nurses) will have an obligation to apply and interpret every state law—criminal and civil—in a manner that “ensure[s] the protection of the rights of the unborn child.”

This Amendment is in fact a “personhood” measure very much like the ones voters overwhelmingly defeated in Mississippi, North Dakota, and Colorado. As a result, the Amendment will have far-reaching consequences that would harm all women including those who want to be pregnant and carry a pregnancy to term.

Who’s At Risk?

People Who Need IVF:

If Amendment 2 passes, in vitro fertilization and other infertility treatments (IVF) for people who need them to become pregnant, could be outlawed. IVF requires fertilizing more eggs and creating more embryos than will be implanted. Groups that oppose abortion have said that disposing of fertilized eggs is the same as abortion and should be prohibited. Since Amendment 2 requires protection of “the right to life” of fertilized eggs and embryos, disposing of those fertilized eggs and embryos created for IVF that are not implanted would violate criminal homicide, abuse, and

assault laws, and the donors, providers, and facility would be at risk of criminal or civil punishment for denying embryos the right to life.

Women Who Experience Stillbirth or Miscarriage:

There is a 15–20% chance of miscarriage or stillbirth in every pregnancy. If Amendment 2 passes, any pregnant woman who loses a pregnancy could become subject to investigation, interrogation, arrest, and prosecution if anyone believes she could have or should have done something to prevent that loss. National Advocates for Pregnant Women has documented numerous cases around the U.S. in which women were charged with crimes (murder, depraved heart homicide, manslaughter, feticide) because they experienced miscarriages and stillbirths, or because the woman was unable to “guarantee” that the child she gave birth to would survive.¹ For example,

- A Louisiana woman went to the hospital when she had unexplained vaginal bleeding. Although she did not know that she had been pregnant, law enforcement suspected her of having had a stillbirth or secretly giving birth to a baby. She was jailed on murder charges for more than a year before medical records were obtained that showed she had experienced a miscarriage at 11 weeks of pregnancy.² **Amendment 2 would allow prosecutions like this in Alabama.**

Women Who Do Anything That “Risks” Harm to Fertilized Eggs, Embryos, or Fetuses:

Because pregnancy occurs inside of a pregnant woman’s body, everything she does or does not do could possibly have an impact on her future child. While there are many strong beliefs about what a woman should and shouldn’t do to have a healthy pregnancy, there is more and more research challenging those beliefs and recognizing that what women experienced in their lives before ever becoming pregnant is the most important thing. If Amendment 2 passes, however, every law including assault, criminal endangering the welfare of a child, and civil child abuse/neglect could be used to arrest, lock up, and punish a woman believed to be taking action perceived to be risky or disapproved of by officials.

We know this to be true because even without Amendment 2, the Alabama State Supreme Court has already interpreted *one* criminal law—the chemical endangerment of a child law (intended to punish adults who bring children to dangerous places such as meth labs)—as a law that can be used to arrest and incarcerate pregnant women and new mothers. As AL.com reported,³ the result of this decision has been the arrest of more than 600 pregnant women who used any amount of any controlled substance—including arrests (as well as public humiliation) of mothers who took prescribed medications as directed.⁴

Amendment 2 requires, as a matter of “state policy” that *all* of Alabama’s laws be interpreted and applied in a manner “to ensure the protection of the rights of” fertilized eggs, embryos, and fetuses. Amendment 2 would be used to justify arrests of women who smoke cigarettes, drink alcohol, miss or fail to make prenatal care appointments, or continue to work despite a doctor’s recommendation for bed rest. Moreover, Alabama’s murder law not only includes “intent to cause the death of another person,” but recklessly engaging in “conduct which creates a grave risk of

death to a person other than himself or herself.” If Amendment 2 passes, this would mean a pregnant woman who is in a car crash⁵, or participates in an extreme sport, or is unable to leave a domestic violence situation could be considered to be engaging in conduct which creates a grave risk of death to a person other than herself—the fertilized eggs, embryos, or fetuses inside her.

Women Who Disagree With Their Doctor’s Advice:

Doctors know a lot, but they are not always right. Patients have the right to decide whether or not they will undergo an operation or take a recommended medication. If Amendment 2 passes, pregnant women would lose these rights. As actual cases from around the country prove, some doctors believe that a woman who refuses recommended cesarean surgery is no different from a woman who has a later term abortion. In their view, both decisions deprive fetuses of their right to life. Women have been locked-up, strapped down, and forcibly cut open based on the same principles that would be established under Amendment 2. Similarly, women who have intentionally and unintentionally given birth at home have also been taken into custody and arrested. These types of state actions, along with forced medical interventions upon pregnant women have already occurred around the country under the belief that such actions protect fertilized eggs, embryos, and fetuses. For example:

- Samantha Burton, a Florida woman, was 22 weeks pregnant and had two small children for whom she was the primary caregiver. When she went into premature labor, doctors obtained a court order allowing them to keep her prisoner in the hospital and forcing her to undergo cesarean surgery without her consent. Neither the detention nor the surgery prevented her from experiencing a stillbirth.⁶ **Amendment 2 could justify such actions against Alabama women.**
- A doctor forcibly performed cesarean surgery on Rinat Dray in New York because they disagreed with her decision to remain in labor. The hospital argued that by remaining in labor the health of her fetus was “in mortal danger as a result of [her] actions.”⁷ The hospital also argued that the policy allowing them to override her refusal was necessary in general because, “the lack of a policy like that at issue would deprive those viable, unborn fetuses of their right to life.”⁸ **Amendment 2 could justify such actions against Alabama women.**
- A Utah woman gave birth to twins, one of whom was stillborn. Based on the claim that her decision to delay having recommended cesarean surgery caused the stillbirth, police arrested her for homicide. She was only released after agreeing to plead guilty to a lesser crime.⁹ **Amendment 2 would allow prosecutions like this in Alabama.**

Women Who Should Be Able to Trust and Confide in Their Medical Providers:

Amendment 2 would undermine the trust pregnant women have in their health care providers by taking away patient confidentiality. Alabama law already states that “in order to protect children whose health and welfare may be adversely affected through abuse and neglect, the Legislature hereby provides for the reporting of such cases to the appropriate authorities.”¹⁰ As a result, anything a woman confides in her doctor that could be considered harmful to her future child—

including an inability to quit smoking or to control her diet—would no longer be considered confidential.

- In Iowa, a woman who fell down the stairs while pregnant was arrested for attempted feticide. She went to the local hospital where she confided that, earlier in her pregnancy, she had considered having an abortion. Her arrest was based on this information that she had shared with a health care provider.¹¹ Fortunately, the charges were dropped, but **Amendment 2 would deny physician-patient confidentiality and allow such arrests.**

Pregnant Women Who Travel:

Alabama’s law makes kidnapping a crime when done to “accomplish or aid the commission of any felony” or to “[i]nfllict physical injury.” If Amendment 2 passes, a woman who travels to another state because she can’t find a doctor willing to support a vaginal birth after cesarean surgery or because she wants medical treatments for cancer or other health problems believed to create risk to a fetus or because she is seeking an abortion in another state could be charged with kidnapping. Interpreting Alabama law to ensure the “protection of the rights of the unborn child in all manners and measures” could also mean that husbands could seek and obtain court orders to prevent women from leaving home if such travel is believed to deny sanctity or rights to the fertilized egg, embryo, or fetus. In fact, courts have already treated women who have traveled out of state while pregnant as if they had kidnapped a child and men have sought court orders to prevent a woman from moving.

- Sarah McKenna moved to New York while she was seven months pregnant. When her son was born she went to court in New York to work out custody arrangements for the child. The father, who lived in California, argued that the case should be decided by California courts, even though the child had never been in that state. The New York trial court agreed with the father, and called Ms. McKenna “irresponsible” and “reprehensible” for “appropriating the child while in utero.”¹² Fortunately, a higher court disagreed,¹³ but **Amendment 2 would create legal authority for controlling and punishing women who travel while pregnant.**
- Martin Wilner filed a petition for habeas corpus against his wife, Karen Prowda, to prevent her from moving a few hours’ drive away where her mother lived. Wilner asked for the order under the laws pertaining to habeas corpus for a child detained by a parent and habeas corpus “for persons illegally imprisoned or otherwise restrained in his liberty.” He asked the court to use its broad powers as *parens patriae* and to grant the orders in the best interest of the child. While the court ultimately held that Wilner had no right to restrict his wife’s movement, **Amendment 2 would provide precisely the grounds for husbands and courts in Alabama to exercise such control over pregnant women.**¹⁴

Women Who Choose Abortion and Their Doctors:

Even though current federal law would still seem to protect the right to choose to have an abortion, experience from around the country demonstrates that if Amendment 2 passes, enterprising

Alabama prosecutors will start arresting women who have abortions (and/or the doctors or family members who help them) under state law. These arrests may result in serious criminal charges ranging from child endangerment to murder. And because bail is often denied to people charged with felonies, women who are charged with a serious crime for having an abortion will have to mount their defense from a jail cell. The majority of women who have abortions are already mothers caring for one or more children. Separated from their loved ones, unable to care for them—it is likely they will plead guilty to some crime if it means release from incarceration sooner.

- In 1994 an Alabaman woman and single mother, Tracy Ann Padgett, delivered a premature infant who was stillborn at birth, but then resuscitated and died approximately eighteen hours later. After experiencing this profound loss, police arrested Ms. Padgett on numerous criminal charges including willful child abuse based on the claim that actions she took during pregnancy caused the loss. More than a year later, a judge dismissed all of the charges against Ms. Padgett, holding that a fetus was clearly not a “child” or a “person” for purposes of these criminal laws that were not designed to authorize punishment of women for the outcome of their pregnancies. **If Amendment 2 passes, judges would be mandated to interpret such laws to require prosecutions of women in Alabama.**

Vote “NO” on November 6th!

Regardless of one’s views on abortion, Amendment 2 is a measure that will put the lives and health of pregnant women, mothers, and babies at risk. When a mother fears that speaking honestly to her doctor could result in being locked up, when seeking help after experiencing a miscarriage could result in a police interrogation and arrest, and when a woman fears her medical decisions can be ignored and overridden, that woman will stop seeking health care. And for a man and a woman who want to become parents and need fertility treatments to do so, Amendment 2 could dash all of their hopes. That is why if you value pregnant women and mothers you must

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¹ Lynn Paltrow & Jeanne Flavin, 2013, “Arrests of and forced interventions on pregnant women in the United States (1973-2005): The implications for women’s legal status and public health,” *Journal of Health Politics, Policy and Law*.

² State v. Greenup, No. 2003–300B (La. Dist. Ct. St. John the Baptist Parish Aug. 16, 2004); Lolly Bowean, *Reserve Woman Indicted in Baby’s Death; Cops Believe Suspect Disposed of Newborn*, TIMES-PICAYUNE (New Orleans), July 30, 2003, at 1; Leonard Gray, *Jones Counts Three Homicides*, L’OBSERSVATEUR (LaPlace, La.), Feb. 11, 2004; Leonard Gray, *Reward Boosted for Suspect*, L’OBSERSVATEUR (LaPlace, La.), Mar. 5, 2004; Gabrielle Maple, *Miscarriage Proof Frees Woman; She Faces Charges of Killing Her Baby*, TIMES-PICAYUNE (New Orleans), Aug. 18, 2004.

State v. Rowland, No. 041901649 (Utah Dist. Ct.-3d Apr. 7, 2004) (Fuchs, J.); Matt Canham, *Prosecutors Drop Murder Charge in C-Section Case; Plea Bargain: After Three Months Behind Bars, the Mother of a Stillborn Baby Pleads Guilty to a Lesser Felony, May Leave Jail Soon; Rowland No Longer Faces the Murder Charge*, SALT LAKE TRIB., Apr. 8, 2004, at A1; Ellen Goodman, Editorial, *Eroding the Rights of Pregnant Women*, WASH. POST, Mar. 27, 2004, at A19; Stephen Hunt, *From Murder Charge to Probation; After the Sentencing for Two Third-Degree Felonies, Rowland Says, “I’m Happy to Be Free,”* SALT LAKE TRIB., Apr. 30, 2004, at B1.

³ Amy Yurkanin & Nina Martin, “Take A Valium, Lose Your Kid, Go to Jail”, ProPublica.com (Sept. 25, 2013) available at <https://www.propublica.org/article/when-the-womb-is-a-crime-scene> (last visited Oct. 1, 2018).

⁴ For example, Hanna Ballenger was charged with chemical endangerment to a child one year after she delivered a son who tested positive for methadone. Ms. Ballenger was legally prescribed methadone and had been properly taking that medication for several years.

⁵ In 2012, a woman was convicted of manslaughter because she gave birth to a baby who died shortly after a car accident that injured her and killed two other people. She was cleared of any wrongdoing with respect to the two people who died in the accident, and a jury found that she was not under the influence of drugs or alcohol, but she was nevertheless convicted of manslaughter because her daughter was born prematurely and did not survive. *People v. Jorgensen*, 26 N.Y.3d 85 (2015) (conviction overturned on appeal).

⁶ *Burton v. State*, 49 So. 3d 263 (Fla. Dist. Ct. App. 1st Dist. 2010); *Florida Trampled Women’s Rights*, St. PETERSBURG TIMES, Editorial, Feb. 4, 2010.

⁷ *Dray v. Staten Island Univ. Hospital et al.*, Brief for Defendants-Appellants-Respondents at 17 (N.Y. Appellate Division 2d Dep’t 2016).

⁸ *Dray*, Defendants’ Affirmation in Support of Cross-Motion and In Opposition to Plaintiff’s Motion to Amend Her Complaint, ¶ 123 (2018).

⁹ *State v. Rowland*, No. 041901649 (Utah Dist. Ct.-3d Apr. 7, 2004) (Fuchs, J.); Matt Canham, *Prosecutors Drop Murder Charge in C-Section Case; Plea Bargain: After Three Months Behind Bars, the Mother of a Stillborn Baby Pleads Guilty to a Lesser Felony, May Leave Jail Soon; Rowland No Longer Faces the Murder Charge*, SALT LAKE TRIB., Apr. 8, 2004, at A1; Ellen Goodman, Editorial, *Eroding the Rights of Pregnant Women*, WASH. POST, Mar. 27, 2004, at A19; Stephen Hunt, *From Murder Charge to Probation; After the Sentencing for Two Third-Degree Felonies, Rowland Says, “I’m Happy to Be Free,”* SALT LAKE TRIB., Apr. 30, 2004, at B1.

¹⁰ Alabama Code Title 26. Infants and Incompetents § 26-14-2; *see also* Alabama Code Title 26. Infants and Incompetents § 26-16-13: “Law enforcement agencies of this state, social service agencies of this state, and state and local departments of human resources shall share information concerning investigations of suspected or actual child abuse or neglect when the sharing of such information is necessary to prevent or discover abuse or neglect of children.”

¹¹ Bryan Nichols, *Burlington Woman Will Not Be Charged With Feticide*, RADIO IOWA, <http://www.radioiowa.com/2010/02/10/burlington-woman-will-not-be-charged-with-feticide/>; Associated Press, *Woman Accused of Trying to Kill Fetus*, Jan. 23, 2010, <http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=2010100122040>.

¹² *NY Court Affirms Right of Pregnant Women to Move Freely*, MS. MAGAZINE, Nov. 19, 2013; Jennifer Peltz, *Bode Miller’s Custody Dispute Becomes Women’s Rights Cause*, THE ASSOCIATED PRESS, Nov. 29, 2013.

¹³ C.R.S.A. § 18-13-121.

¹⁴ *Wilner v. Prowda*, 158 Misc.2d 579 (N.Y. Sup. Ct. N.Y. County, 1993).